

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Maskina Communications, Inc. |) | |
| |) | CC Docket No. 96-45 |
| Appeal of Decision of the Universal Service |) | |
| Administrative Company and Request for |) | |
| Waiver |) | |
| _____ |) | |

**APPEAL OF DECISION OF THE UNIVERSAL SERVICE ADMINISTRATIVE
COMPANY AND REQUEST FOR WAIVER**

Maskina Communications, Inc. ("Maskina"),¹ through its undersigned counsel and pursuant to sections 1.3 and 54.719 through 54.722 of the Federal Communications Commission's ("Commission") rules, 47 C.F.R. §§ 1.3, 54.719-54.722, respectfully appeals the Universal Service Administrative Company's ("USAC") rejection of Maskina's late-filed corrected May 2007 FCC Form 499Q and requests that the Commission waive the forty-five day deadline for correcting the May 2007 FCC Form 499Q.² Failure to grant this request will impose unnecessary and undue financial hardship on Maskina.

I. BACKGROUND

Maskina timely filed its May 2007 FCC Form 499Q. In that filing, however, Maskina's agent, TCS Compliance Systems ("TCS"), which prepared the filing, erroneously reported Maskina's projected end user revenue. Specifically, in the filing, TCS listed revenue

¹ Maskina's filer ID is 822852.

² See Letter to Kellee Wamble, Maskina Communications, Inc. from USAC, RE: May 2007 FCC Form 499-Q Revision Rejection (Oct. 15, 2007) (hereinafter "Rejection Letter") (attached as Exhibit 1). By letter of appeal dated September 25, 2007, out of an abundance of caution, having not yet received a rejection of its revised May 2007 FCC Form 499Q, Maskina filed a letter of appeal of USAC's billing statement to Maskina, dated July 20, 2007, Invoice Number UBDI0000257417, which was based off of the original May 2007 FCC Form 499Q.

*****REDACTED*****

that should have been characterized as revenue provided to other universal service contributors (carrier's carrier revenue) (line 119) as end-user revenue (line 120). Instead of separating out its projected end user revenue and its protected carrier's carrier revenue, Maskina included the same dollar amounts in both lines 119 and 120. This reporting error caused Maskina to appear to owe USF contributions on a substantially larger contribution base, because it included both end user and carrier's carrier revenues. *****BEGIN CONFIDENTIAL*****

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On July 13, 2007, USAC contacted Maskina with questions regarding its FCC Form 499s. In preparing to respond to USAC's inquiry, Maskina reviewed its filings, including the May 2007 FCC Form 499Q, and discovered the error in the May 2007 FCC Form 499Q. TCS, the entity charged with preparing the 499Q on behalf of Maskina, acknowledges that its system and procedures failed to properly reflect the correct numbers/output for Maskina's May 2007 FCC Form 499Q.

By invoice dated July 20, 2007, USAC mailed an invoice billing Maskina its monthly universal service contribution based on the information contained in the erroneously reported May 2007 FCC Form 499Q. On July 24, 2007, before receiving the July 20 USAC invoice, Maskina filed a corrected May 2007 FCC Form 499Q.³ On October 15, 2007, USAC

³ See Exhibit 2: Maskina's Corrected May 2007 FCC Form 499Q.

notified Maskina by letter that it had rejected Maskina's corrected May 2007 FCC Form 499Q, because Maskina filed the form after the close of the forty-five day correction window.⁴

II. THE FCC SHOULD REVERSE USAC'S DECISION AND GRANT A WAIVER OF THE FORTY-FIVE DAY DEADLINE FOR CORRECTING ITS MAY 2007 FCC FORM 499Q

Maskina respectfully appeals USAC's rejection of Maskina's late-filed May 2007 FCC Form 499Q, and requests that the Commission waive the forty-five day deadline to correct quarterly filings.

The Commission has the authority to waive the forty-five day filing requirement for good cause.⁵ In determining whether good cause exists, the Commission has examined if there are special circumstances that warrant deviation from the requirement, and whether granting the waiver will serve the public interest.⁶ In *Wait Radio v. FCC*, the court found that a petitioner can demonstrate special circumstances through undue hardship.⁷

The Commission previously has granted waivers of filing deadlines for good cause, and the Commission should do so in this case. As one example, in *APCC Services, Inc. et al. v. Network IP, LLC et al.*, the FCC waived a six-month filing deadline set forth in the FCC's rules, finding that APCC would suffer substantial hardship if the FCC did not waive the deadline.⁸ In that case, APCC's counsel made an error, which resulted in the late-filed pleading. The FCC found that if it denied the waiver of the filing deadline, then APCC would be unable to

⁴ See Exhibit 1: Rejection Letter.

⁵ 47 C.F.R. § 1.3 (stating, "[t]he provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.").

⁶ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

⁷ *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁸ *APCC Services, Inc. et al. v. Network IP, LLC, et al.*, 20 FCC Rcd 16727 (2005).

*****REDACTED*****

collect compensation to which it was entitled.⁹ On the basis of this substantial hardship, the FCC found that good cause existed to waive the filing deadline.¹⁰

Similarly, in the present case, good cause exists to waive the forty-five day filing deadline. As was the case in *APCC v. Network IP*, Maskina's filing error was due to an independent consultant, not the filer itself. Maskina did not discover the error until USAC inquired about Maskina's reporting, thus causing Maskina to re-evaluate whether its consultant had completed the May 1 FCC Form 499Q in an accurate manner.

Moreover, Maskina will suffer undue hardship if the Commission does not waive the forty-five day filing deadline. The invoice that USAC submitted to Maskina based on information contained in Maskina's erroneous May 2007 FCC Form 499A is more than

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⁹ *Id.*

¹⁰ *Id.*

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Based on Maskina's projected end user revenues, Maskina's universal service contributions for the entire year would be approximately *****BEGIN CONFIDENTIAL*****

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CONFIDENTIAL*** Maskina does not have the cash flow to remit the invoiced amount, and requiring Maskina to obtain funding to cover the invoiced amount would cause undue hardship and unnecessarily affect Maskina's operations to its end user customers. Moreover, even if Maskina were able to submit payment to USAC, it is unduly harsh to require Maskina to do so knowing that the billed amount is in error and to require Maskina to wait nearly a full year until it is able to file the FCC Form 499A, which would reflect the actual amounts collected for the entire year.

Granting Maskina's request for waiver will serve the public interest and will not undermine the interests of regulation. The public interest would not be served by requiring Maskina to contribute money to the universal service fund that it does not owe, only to wait nearly a year to have it refunded. Furthermore, granting a one-time waiver of the forty-five day time period in which to correct the filing in no way undermines the universal service fund; Maskina still will contribute to the universal service fund on the basis of its end user revenue.

III. CONCLUSION

Maskina respectfully requests that USAC reverse its decision to reject Maskina's late-filed corrected May 2007 FCC Form 499Q, and grant Maskina a waiver of the forty-five day deadline in which to correct the May 2007 FCC Form 499Q.

Respectfully submitted,



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Exhibit 1

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Exhibit 2

[Redacted]